

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN M. McNAMUS, :
Plaintiff : **CIVIL ACTION NO. 3:14-1265**
v. : **(MANNION, D.J.)**
(BLEWITT, M.J.)
VESSEL BRUCE DeSARRO, :
Defendant :

MEMORANDUM

Pending before the court is a Complaint in which Plaintiff John M. McNamus, currently an inmate at SCI-Benner Township, seeks relief concerning, *inter alia*, a maritime vessel under admiralty law and a motion to withdraw a libel claim. Also before the court is a recommendation from Magistrate Judge Blewitt that the case be dismissed without prejudice pursuant to [Federal Rule of Civil Procedure 41\(b\)](#) and that the Motion to Withdraw Libel be deemed moot.

I. PROCEDURAL HISTORY

On July 1, 2014, plaintiff filed a *pro se* complaint under [42 U.S.C. §1983](#) titled “IN ACTION/IN REM,” “IN ADMIRALTY,” “NUNC PRO TUNC.” (Doc. [1](#)). On July 14, 2014, plaintiff filed a motion for leave to file an amended libel

claim and a motion to proceed *in forma pauperis*. (Doc. [5](#), Doc. [6](#)). On July 23, 2014, Judge Blewitt issued an order instructing plaintiff to file an amended complaint within fifteen (15) days. (Doc. [9](#)). Plaintiff's only response to date was an August 4, 2014 "Motion to Withdraw Libel." (Doc. [11](#)). Plaintiff has not otherwise responded to the July 23, 2014 Order.

II. **LEGAL STANDARD**

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."

[Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), [702 F.Supp.2d 465, 469 \(2010\)](#) (citing [Henderson v. Carlson](#), [812 F.2d 874, 878 \(3d Cir. 1987\)](#) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31. Under [FRCP 41\(b\)](#), an action may be dismissed for "failure of the plaintiff to prosecute or comply with these rules or *order of the court*." (Emphasis added).

III. DISCUSSION

The court agrees with Judge Blewitt that plaintiff has willfully failed to prosecute his claims, and that the consequences of this failure were made clear to him. Since plaintiff clearly intended to abandon his case, the typically applicable *Poulis* factors need not be considered. See [Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 \(3d Cir. 1984\).](#)

The court has reviewed each of the recommended bases presented by Judge Blewitt for denying the plaintiff's motion for relief and deeming his motion to withdraw his libel claim moot. Because the court agrees with the sound reasoning that led Judge Blewitt to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: October 16, 2014

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